IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 460 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESHBHAI BABUBHAI SHAH

Versus

STATE OF GUJ

Appearance:

1. Criminal Revision Application No. 460 of 1994

MR SAURIN A SHAH for Petitioner No. 1-2

MR SJ DAVE, APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/02/2003

ORAL JUDGEMENT

The petitioner herein has preferred this revision application under Section 397 read with Section 401 of

the Code of Criminal Procedure, 1973 (for short, "the Code"), challenging an order dated 14-10-94/17-10-94 recorded by the learned Chief Metropolitan Magistrate at Ahmedabad (Ex. 2) in Criminal Case No. 3514 of 1988 under which the learned Magistrate directed that the aforesaid case be committed to the court of Sessions.

2. It appears from the record that the present petitioner along with co-accused were facing trial before the said court, in the said Criminal Case for offences punishable under the Drugs and Cosmetics Act, 1940. During the course of the pendency of the trial, the learned APP incharge of the proceeding, submitted an application on 18/08/90 at Ex.2 stating that as per Section 27 of the said Act, the minimum punishment provided is five years and the maximum is imprisonment for life. That, therefore, the case is triable by the Court of Sessions and therefore, the case may be committed to the said Court.

3. After hearing the arguments, the learned trial Magistrate found that since the offence was punishable with imprisonment for life, it would be appropriate to commit the case to the court of Sessions. Accordingly, the learned Magistrate allowed the said application and directed the case to be committed to the court of Sessions.

4. Feeling aggrieved by the said order, the petitioner original accused, has preferred this revision application before this Court, mainly on the ground that the offence alleged against the petitioners is one punishable with life imprisonment. Nevertheless, the trial Magistrate had jurisdiction to entertain the said case. It is also his case that provisions have been made in Section 36 of the said Act, for empowering a Magistrate to impose enhanced punishment also. In that view of the matter, it was not necessary or legal to pass an order, committing the case to the court of Sessions. That, therefore, the impugned order is illegal and deserve to be set aside.

5. Rule was issued. In pursuance of the service of notice of Rule, Mr.S J Dave, learned APP appears for respondent no. 1 - State. I have heard the learned advocates for the parties and have perused the papers.

6. It is true that the offences with which the petitioner stand charged, are offences punishable with imprisonment for life also. However, simply because an offence is one punishable for life, it is not required to

be committed to the court of Sessions.

7. The offences punishable under Section 326 and 409 IPC are the offences punishable with imprisonment for life and yet are triable by a Magistrate. Even otherwise, Section 36 of the said Act has been reproduced at Page (e) in the memo of Revision which may be reproduced for ready reference as follows;

SECTION 36 : MAGISTRATE'S POWER TO IMPOSE ENHANCED PENALTIES

"Notwithstanding anything contained in the Code of the Criminal Procedure, 1973 (2 of 1974) it shall be lawful for (any metropolitan Magistrate or any Judicial Magistrate of the First Class) to pass any sentence authorized by this Act in excess of his powers under Section 29 of the Cr. Procedure Code."

8. The above provision makes it clear that a Magistrate trying an offence punishable under the said Act, is empowered to impose higher punishment provided in the said Act.

9. Therefore, in the case on hand, if the learned Magistrate feels that the petitioners are required to be sentenced for the aforesaid offence to the extent more than what is provided in the said Code then also there is no bar to do so, in view of the provisions made in Section 36 of the said Act. In this connection, the learned advocate for the petitioner has referred to a decision of this court rendered on 16th March, 2002 in Bharatkumar Amratlal Shah Vs. State of Gujarat in Criminal Revision Application No. 23 of 2002 (Coram : C.K.Buch, J.), wherein a similar point had arisen and after considering relevant case laws, this Court had observed that it was not a case which was required to be committed to the court of Sessions. Ultimately, the said order of committal was set aside by this Court in the said matter.

10. In view of the above position and considering the provisions made in Section 36 of the said Act and considering the aforesaid decision of this Court and after hearing the learned APP for the State, I am of the opinion that there is no reason to take a view, different from the view taken by this Court in the aforesaid case and consequently, there is no alternative but to allow the present revision application.

11. For the foregoing reasons, this revision

application is allowed. The order passed by the learned Chief Metropolitan Magistrate on 14-10-94/17-10-94 below application Ex.2, in Criminal Case No. 3514 of 1988 is set aside. The trial court shall proceed with trial against the petitioner in accordance with law. Rule is made absolute.

(D. P. Buch, J.)

pravin/